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### **In this chapter. . .**

In both “automatic waiver” and designated case proceedings, the court may impose an adult sentence upon a juvenile, or the court may delay imposition of an adult sentence and place the juvenile on probation. When a juvenile has not been committed to the Department of Corrections following conviction, probation and court review requirements are substantially similar in “automatic waiver” and designated case proceedings. This chapter describes the requirements for case reviews, required review hearings, probation revocation, and final review hearings in both types of proceedings.

See Section 1.6 for a comparison of waiver and designated case proceedings.

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered

Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998).

## 22.1 Jurisdiction to Impose Adult Sentence

In both “automatic waiver” and designated case proceedings, a delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile during the delay. MCL 712A.18i(1) and MCL 769.1(10).

## 22.2 Required Annual Reviews

In both “automatic waiver” and designated case proceedings, the court must conduct an annual review of a juvenile’s probation to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. Such reviews include, but are not limited to, the services being provided to the juvenile, the juvenile’s placement, and the juvenile’s progress in that placement. In conducting an annual review, the court must examine any annual report prepared under MCL 803.223 of the Juvenile Facilities Act, and any report prepared upon the court’s order by the officer or agency supervising probation. The court may order changes in the juvenile’s probation based on the review including but not limited to imposition of sentence. MCL 712A.18i(2), and MCR 3.956(A)(1)(a)(i), and MCL 769.1(11), MCR 6.935(B)(2), and MCR 6.935(C).

**Semi-annual progress reviews in “automatic waiver” proceedings.** In “automatic waiver” proceedings, in addition to annual reviews, the court must conduct semi-annual progress reviews of all juveniles who have been placed on juvenile probation and committed to public wardship. These reviews must occur 182 days after entry of the initial order and semi-annually thereafter. MCR 6.935(B)(1).

**Hearing requirements.** Under MCR 6.935(D), which applies to “automatic waiver” proceedings, there is no requirement that the court hold a hearing when conducting an annual review or semi-annual progress review unless the court orders a more restrictive placement or treatment plan. The court rules governing designated case proceedings do not contain a similar provision. As noted above, the statutes and court rules governing annual reviews in both “automatic waiver” and designated case proceedings give a court authority to commit a juvenile to the Department of Corrections based on an annual review.

## 22.3 Required Review Hearings at Age 19

In both “automatic waiver” and designated case proceedings, the court must conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. MCR 3.956(A)(1) and MCR 6.903(A). The juvenile may be committed to the Department of Corrections following this hearing. MCL 712A.18i(3) and MCL 769.1b(1).

### A. Time Requirements

In both “automatic waiver” and designated case proceedings, a review hearing must be held within 42 days before the juvenile turns age 19 unless adjourned for good cause. MCR 6.937(A) and MCR 3.956(A)(1)(a)(iii).

Failure to hold the required review hearing within 42 days of the juvenile’s 19th birthday violated applicable statutes and court rules but did not deprive the court of jurisdiction to sentence the juvenile for a subsequent probation violation, where at the time of the probation violation jurisdiction had been continued until the juvenile reached age 21, and where revocation proceedings had begun before the period of probation expired. *People v Valentin*, 220 Mich App 401, 406–08 (1996).

In both “automatic waiver” and designated case proceedings, if an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the institution or agency may petition the court to conduct a review hearing any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction, any time before the juvenile becomes 21 years of age. MCL 712A.18i(4) and MCR 3.956(A)(1)(a)(ii), and MCL 769.1b(2) and MCR 6.937(B).

### B. Notice Requirements

In “automatic waiver” proceedings,” the Family Independence Agency or the agency, facility, or institution to which the juvenile has been committed must advise the court at least 91 days before the juvenile’s 19th birthday of the need to schedule a commitment review hearing. MCR 6.937(A)(1).

Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, the agency or superintendent of the facility to which the juvenile has been committed, and, if addresses are known, the juvenile’s parent or guardian shall be notified by the court. The notice must state that the court may extend jurisdiction over the juvenile and must advise the juvenile and the juvenile’s parent or guardian of the right to legal counsel. MCL 769.1b(3) and MCR 6.937(A)(1).

In designated case proceedings, not less than 14 days before a review hearing is to be conducted, the prosecutor, the agency or superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if addresses are known, the juvenile's parent, guardian, or legal custodian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile or impose sentence and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. MCL 712A.18i(5), and MCR 3.956(A)(1)(b).

### C. Appointment of Counsel

\*See Section 20.4 for the requirements for a valid waiver of the right to counsel.

In "automatic waiver" proceedings, if legal counsel has not been waived by the juvenile pursuant to MCR 6.905(C),\* or if counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 769.1b(3) and MCR 6.937(A)(2).

In designated case proceedings, if legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 712A.18i(5) and MCR 3.956(A)(2).

### D. Reports

In "automatic waiver" proceedings, the state institution or agency charged with the care of the juvenile must prepare commitment reports as provided in MCL 803.225 of the Juvenile Facilities Act. MCL 769.1b(4) and MCR 6.937(A)(3).

In designated case proceedings, a commitment report prepared pursuant to MCL 803.225 of the Juvenile Facilities Act and any report prepared upon the court's order by the officer or agency supervising probation may be considered by the court at a review hearing. MCL 712A.18i(6) and MCR 3.956(A)(3).

A commitment report must contain all of the following:

"(a) The services and programs currently being utilized by, or offered to, the juvenile and the juvenile's participation in those services and programs.

"(b) Where the juvenile currently resides and the juvenile's behavior in his or her current placement.

“(c) The juvenile’s efforts toward rehabilitation.

“(d) Recommendations for the juvenile’s release or continued custody.” MCL 803.225(1)(a)–(d).

MCL 803.225(3) allows the report created pursuant to MCL 803.223 for purposes of annual reviews to be combined with a commitment review report.

## **E. Burden and Standard of Proof**

MCR 6.937(A)(4), which applies to “automatic waiver” proceedings, states “[b]efore the court continues the jurisdiction over the juvenile until age 21, the prosecutor must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The rules of evidence do not apply.”

MCR 3.956(A)(4)(a), which applies to designated case proceedings, states that “[b]efore the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney shall demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.”

## **22.4 Criteria to Determine Whether to Continue Jurisdiction or Impose Sentence at Required Review Hearing**

In both “automatic waiver” and designated case proceedings, the court must decide whether to continue jurisdiction over the juvenile or impose sentence. In making this determination, the court must consider the following:

- the extent and nature of the juvenile’s participation in education, counseling, or work programs;
- the juvenile’s willingness to accept responsibility for prior behavior;
- the juvenile’s behavior in his or her current placement;
- the prior record and character of the juvenile and his or her physical and mental maturity;
- the juvenile’s potential for violent conduct as demonstrated by prior behavior;
- the recommendations of any institution, facility, or agency charged with the juvenile’s care for the juvenile’s release or continued custody; and

- any other information the prosecuting attorney or juvenile may submit.

MCR 3.956(A)(4)(a)(i)–(vii) and MCL 712A.18i(3)(a)–(g), and MCL 769.1b(1)(a)–(g) and MCR 6.937(A)(4)(a)–(g).

## 22.5 Mandatory Probation Revocation for Commission of a Felony

If a juvenile is placed on probation in either “automatic waiver” or designated case proceedings, the court must revoke probation and impose sentence if the juvenile is:

- convicted of a felony or a misdemeanor punishable by imprisonment for more than one year, or
- adjudicated as responsible for an offense that if committed by an adult would be a felony or misdemeanor punishable by imprisonment for more than one year. MCL 712A.18i(9) and MCR 3.956(B)(1), and MCL 771.7(1) and MCR 6.933(B)(1)(a).

The provisions governing designated case proceedings provide that the length of the sentence imposed must not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation. MCL 712A.18i(9) and MCR 3.956(B)(1). However, the court rule governing “automatic waiver” proceedings allows the court only to order the juvenile committed to the Department of Corrections for *a term of years* not to exceed the penalty that could have been imposed for the offense that led to the probation. MCL 771.7(1) and MCR 6.933(B)(1).

\*See Section 23.4 for the current penalty.

In “automatic waiver” proceedings, a juvenile who is placed on probation and committed to public wardship for manufacture, delivery, or possession with intent to deliver 650 grams or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resented only to *a term of years*, not to a non-parolable life sentence as previously mandated\* for adults by the controlled substance statute, and not to a parolable life sentence, following mandatory revocation of probation for commission of a subsequent felony. *People v Valentin*, 457 Mich 1, 11, 14 (1998).

Similarly, the literal language of MCL 771.7(1), upon which MCR 6.933 is based, indicates that a juvenile convicted of first-degree murder who violates probation can only be sentenced to a term of years, thus prohibiting a sentence of nonparolable life. See MCR 6.933(B)(1)(a).

MCR 6.933(C)(1) and (2) state:

**“(C) Disposition Regarding Specific Underlying Offenses.**

(1) Controlled Substance Violation Punishable by Mandatory Nonparolable Life Sentence For Adults. A juvenile who was placed on probation and committed to state wardship for manufacture, delivery, or possession with the intent to deliver 650 grams or more of a controlled substance, MCL 333.7401(2)(a)(i), may be resentenced only to a term of years or to a parolable life sentence, following mandatory revocation of probation for commission of a subsequent felony or a misdemeanor punishable by more than one year of imprisonment.

(2) First-Degree Murder. A juvenile convicted of first-degree murder who violates juvenile probation by being convicted of a felony or a misdemeanor punishable by more than one year’s imprisonment may only be sentenced to a term of years, not to nonparolable life.”

In designated case proceedings, commitment to the Department of Corrections is apparently an option following revocation of probation for the commission of a felony or high-court misdemeanor, where the juvenile was originally convicted of a non-”specified juvenile violation” (i.e., in a court-designated case). MCL 712A.18i(9) and MCR 3.956(B)(1), allow imposition of any penalty that could have been imposed for the original conviction, and juveniles can be committed to the Department of Corrections immediately following conviction in a designated case only for “specified juvenile violations.” MCL 712A.18h. When imposition of an adult sentence has been delayed, however, the court may impose sentence at any time during the delay under MCL 712A.18i, and section (11) of that statute contemplates a sentence of imprisonment.

**Escape from juvenile facilities and consecutive sentencing.** MCL 750.186a(1) makes it a felony for an individual who is placed in a juvenile facility to escape or attempt to escape from that juvenile facility or from the custody of an employee of that facility. Thus, in “automatic waiver” and designated case proceedings, a juvenile convicted under this statute would face a mandatory prison sentence. “Escape” means to leave without lawful authority or to fail to return to custody when required. MCL 750.186a(2)(a). A juvenile facility includes an institution operated as an agency of the county or court, and a state institution to which an offender has been committed for a misdemeanor or felony offense. MCL 750.186a(2)(b).

Consecutive sentencing is required where a person commits any offense while incarcerated in a penal or reformatory institution, or after escaping from such an institution. MCL 768.7a. Consecutive sentences must also be

imposed where a person commits a major controlled substance offense while another felony charge is pending, MCL 768.7b(2)(b), and consecutive sentences may be imposed where a person commits a felony while another felony charge is pending. MCL 768.7b(2)(a). It is unclear whether a charge is pending where the court has delayed imposition of sentence and placed the juvenile on probation in designated case proceedings or placed the juvenile on probation and committed him or her to public wardship in “automatic waiver” proceedings. See *People v Leal*, 71 Mich App 319, 321 (1976), and *People v Malone*, 177 Mich App 393, 401–02 (1989) (statute does not apply to an offense committed while the defendant is on probation, as the prior offense is no longer pending); *People v Hacker*, 127 Mich App 796 (1983) (case is still pending if defendant is on delayed-sentence status when the new offense is committed), and *People v Dukes*, 189 Mich App 262, 266–67 (1991) (case is pending until a defendant is sentenced).

## 22.6 Other Probation Violations

In designated case and “automatic waiver” proceedings, if the juvenile violates probation in some way other than committing a felony or “high-court misdemeanor,” the court may impose sentence or may order any of the following for the juvenile:

- a change of placement;
- restitution;
- community service
- substance abuse counseling;
- mental health counseling;
- participation in a vocational-technical education program;
- incarceration in a county jail for not more than 30 days if:
  - the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and
  - the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners;
- other participation or performance as the court considers necessary.

MCL 712A.18i(10)(a)–(g) and MCR 3.956(B)(2)(a)–(g), and MCL 771.7(2) and MCR 6.933(B)(2).



## 22.7 Probation Violation Hearing Procedures

In designated case proceedings, probation violation hearings must be conducted pursuant to MCR 3.944(C), which governs probation violations in juvenile delinquency proceedings. MCR 3.956(B)(3).\*

In “automatic waiver” proceedings, the court must proceed as provided in MCR 6.445(A)–(F), which govern probation revocation in adult criminal proceedings. MCR 6.933(A). If the court revokes juvenile probation, the court must receive an updated presentence report and comply with MCR 6.445(G) before it imposes a prison sentence on the juvenile. MCL 771.7(1) and MCR 6.933(B)(3). MCR 6.445(G) requires the court to disclose the presentence report before sentencing pursuant to MCR 6.425(B), and to comply with the procedures for sentencing hearings in MCR 6.425(D)(2)–(3).\*

\*See Chapter 13.

\*For detailed discussion of the procedural rules governing probation revocation in adult and “automatic waiver” proceedings, see *Criminal Procedure Monograph 7—Probation Revocation (Revised Edition)* (MJJI, 2002).

## 22.8 Final Reviews at End of Probation Period

In both “automatic waiver” and designated case proceedings, the court must conduct a final review of the juvenile’s probation and/or commitment not less than 91 days before the end of the probation period. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence. MCL 712A.18i(7), MCR 3.956(A)(1)(a)(iv), and MCR 3.956(A)(4), and MCL 769.1b(5), and MCR 6.938(A).

Final review hearings were added to the “automatic waiver” statutes in 1996. Final review hearings were also a feature of designated case proceedings from their inception in 1996. Prior to these statutory amendments, a court was required to attempt to determine whether a juvenile’s probation period would be long enough to make the juvenile’s rehabilitation a possibility. The advent of the final review hearing ameliorates this problem, which was identified by the Court of Appeals in *People v Black*, 203 Mich App 428, 430–31 (1994):

“In this case and in many others like it, our statutes create a serious quandry for the trial court. For older juveniles guilty of crimes that carry mandatory life sentences without any possibility of parole, trial courts are caught between Scylla and Charybdis: between underpunishing the most serious juvenile crimes or sentencing teenagers to live out their lives in prison.”

See also *People v Spearman*, 195 Mich App 434, 447–48 (1992), rev’d in part on other grounds sub nom *People v Rush*, 443 Mich 870 (1993), overruled in part on other grounds 443 Mich 23 (1993).

### **A. Notice Requirements**

Not less than 14 days before a final review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent, guardian, or legal custodian must be notified. The notice must state that the court may impose a sentence upon the juvenile and must advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. MCL 769.1b(6), MCR 6.938(B), and MCL 712A.18i(8) and MCR 3.956(A)(1)(b).

### **B. Appointment of Counsel**

In "automatic waiver" and designated case proceedings, if legal counsel has not been retained or appointed to represent the juvenile, the court must appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply. MCL 769.1b(6) and MCR 6.938(C), and MCL 712A.18i(8) and MCR 3.956(A)(2).

### **C. Reports**

The rules governing the use of reports at final review hearings are the same as those applicable to commitment review hearings. For discussion of those rules, see Section 22.3(D), above.

### **D. Burden and Standard of Proof**

MCR 6.938, which applies to "automatic waiver" proceedings, does not assign the burden of proof to either party or state whether the rules of evidence apply at a final review hearing. MCR 6.938(A) states only that "[i]f the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose that sentence.

MCR 3.956(A)(4)(a), which applies to designated case proceedings, states that "[b]efore the court may . . . impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply."

## **22.9 Criteria to Determine Whether to Impose Adult Sentence at Final Review Hearing**

In both "automatic waiver" and designated case proceedings, the court must determine whether the best interests of the public would be served by

imposition of a sentence provided by law for an adult offender. In making this determination, the court must consider all of the following criteria:

- the extent and nature of the juvenile’s participation in education, counseling, or work programs;
- the juvenile’s willingness to accept responsibility for prior behavior;
- the juvenile’s behavior in his or her current placement;
- the prior record and character of the juvenile and his or her physical and mental maturity;
- the juvenile’s potential for violent conduct as demonstrated by prior behavior;
- the recommendations of any institution, facility, or agency charged with the juvenile’s care for the juvenile’s release or continued custody;
- other information the prosecuting attorney or juvenile may submit;
- the effect of treatment on the juvenile’s rehabilitation;
- whether the juvenile is likely to be dangerous to the public if released; and
- the best interests of the public welfare and the protection of public security.

MCR 3.956(A)(4)(b)(i)–(iii) and MCL 712A.18i(7)(a)–(c), and MCL 769.1b(5)(a)–(c) and MCR 6.938(D)(1)–(10).

## **22.10 Release from Custody and Discharge From Public Wardship**

A provision of the Youth Rehabilitation Services Act, MCL 803.307, sets forth the requirements for releasing from custody a juvenile who is subject to court jurisdiction, and for discharging a juvenile from public wardship. That provision states, in relevant part:

“(1) A youth accepted by a youth agency remains a public ward until discharged from public wardship with the approval of any of the following and, if placed in an institution, shall remain until released with the approval of any of the following:

. . . . (b) If the youth was committed to a youth agency under . . . MCL 769.1, with the approval of the court of general criminal jurisdiction under . . . MCL 769.1b.

“(2) Except as otherwise provided in this section, a youth accepted as a public ward shall be automatically discharged from public wardship upon reaching the age of 19. Except as provided in subsection (3), a youth committed to a youth agency under section 18(1)(e) of chapter XIA of 1939 PA 288, MCL 712A.18, for an offense that, if committed by an adult, would be a violation or attempted violation of section 72, 83, 84, 86, 88, 89, 91, 110a(2), 186a, 316, 317, 349, 520b, 520c, 520d, 520g, 529, 529a, 530, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.84, 750.86, 750.88, 750.89, 750.91, 750.110a, 750.186a, 750.316, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, 750.530, and 750.531, or section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, shall be automatically discharged from public wardship upon reaching the age of 21. Except as provided in subsection (4), a youth committed to a youth agency under . . . MCL 769.1, shall be automatically discharged from public wardship upon reaching the age of 21.

“(3) If the family division of circuit court imposes a delayed sentence on the youth under [MCL 712A.18(1)(n)], the youth shall be discharged from public wardship and committed under the court’s order.

“(4) If a court of general criminal jurisdiction sentences the youth to a sentence provided by law for an adult offender under . . . MCL 769.1b, the youth shall be discharged from public wardship and committed under the court’s order.”